

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

PREAMBLE

The conditions of this order are designed to protect QIT Madagascar Minerals' (QMM's) interest. QMM wants to ensure that the whole process, from Purchase to Payment, is as efficient as possible for both parties. These conditions are aimed at ensuring ease of understanding the order, delivery, goods receipt, invoicing and, payment requirements.

All orders placed by QMM shall be subject to these conditions save as may be modified by the order. The supply of goods by the Seller to QMM shall be governed by the terms and conditions of this agreement which shall apply to the exclusion of the Sellers terms and conditions of sale/supply. If these terms are not acceptable, the related order should not be accepted and services or goods should not be supplied before getting written acceptances of changes.

DEFINITIONS

Accumulation Period means the period commencing on the first day of a calendar month and ending on the last day of that calendar month.

Delivery Date means the date by which the Goods will be delivered to the delivery point, or to the Mine, as specified on this order.

Goods means the goods or the services specified in this order, and any attachments to the order.

Freight Forwarder means the appointed company that will receive goods on behalf of QMM for transport to Madagascar

Payment Date means, unless otherwise specified in the related order, the fifteenth day of the second month following the end of the Accumulation Period in which the invoice is received by QMM (for the avoidance of doubt, the term '45 days after end of Accumulation Period' when used in the related order has the same meaning as "Payment Date").

Personal Data means information relating to any identifiable individual.

Privacy Legislation means all applicable legislation relating to privacy and data protection, including the *Law No 2014-038* relating to protection of personal data.

Procurement Manager means the Procurement Manager of QMM Limited or Rio Tinto Procurement Service Delivery Manager and their delegates.

Purchase Price means the price stated in the order

QMM means QIT Madagascar Minerals S.A.

QMM Personal Data means Personal Data disclosed to Seller by QMM, or collected by Seller for the purposes of this PO.

CONDITIONS

1. **Offer and Acceptance** – This order is an offer to buy the Goods described in the order. The acceptance of this order, whether actual or implied, constitutes the acceptance of the offer and of all related terms and conditions. It would be an advantage and benefit if a formal receipt and acceptance of this order could be communicated directly to the relevant Buyer indicated on the order (preferably by e-mail or secondly by Fax.)
2. **Non-acceptance of Order** – Should the Seller not accept this order or its terms and conditions, they shall return it to QMM within seven days of receipt with a written explanation for its rejection.
3. **Inspection and audit** – QMM shall be entitled, at such frequency as it may determine, to send a person authorised by it (the authorised representative) to the Seller's works at any stage of manufacture or production for the purpose of inspecting the goods and/or monitoring the services. The Seller shall afford the authorised representative access to the work in progress and all facilities and information relating thereto for the purpose of such inspection. QMM reserves the right to reject goods at any stage of manufacture which are found to be in any way defective or not in conformity with the terms of the order.

The Seller shall keep proper accounting and administrative records relating to its dealings with QMM. QMM shall have the right, at its cost, to have its auditors make an examination and audit of the records of the Seller during the term of the agreement and for a period of two years thereafter, provided that such audit(s) shall be conducted during normal business hours at a time and place mutually agreeable to the parties.

4. **Specifications** – Goods delivered to QMM shall be in accordance with the specifications given with this order and with generally accepted standards. Should QMM consider that any of the Goods delivered are not in accordance with these specifications or standards, QMM shall be entitled to cancel this order, or part of it, and to receive compensation from the Seller for all expenses incurred. Any variation from the specifications or standards laid down in this order shall be authorised in a revised Purchase Order before being applicable.
5. **Patents and Copyright** – Should any Goods sold to QMM be covered by any patent or copyright, the Seller will compensate QMM for any loss incurred and damage sustained by QMM from any resulting claim or legal action arising from the use or sale of the Goods.
6. **Patterns, Drawings and Dies** – Where applicable, a charge for patterns, drawings and dies may be accepted by QMM on the understanding that the patterns and dies remain the property of QMM and are used only for QMM's requirements. Should QMM wish to remove the patterns, drawings and dies from the Seller's safekeeping, they must be handed over to QMM's nominee in sound and usable condition.
7. **Packing** – The Seller must pack and protect all Goods ready for despatch so that they are in accordance with all applicable laws, comply with QMM's policies provided in writing to the Seller, and comply with first class international standards having regard to methods of transport to the delivery point and handling and to the weather conditions whilst in transit to the delivery point. The Seller shall compensate QMM for any loss or deterioration of the goods whilst in transit from the Seller's to QMM's premises, or place of delivery as per INCO terms, due to the packing being inadequate or inappropriate to the method of transport. Goods must be individually identified, and each consignment must be accompanied by a detailed waybill giving gross weight of containers. All packages, cases, cartons and containers and packaging material shall be deemed to have been included in the Purchase Price and shall become QMM's

property upon delivery. The Seller shall be responsible for packing and marking goods in such manner as will eliminate loss or damage in transit. Goods must be suitably packed for export.

8. **Delivery** – Delivery to QMM is deemed to take place when the Goods are received at the QMM Central Stores or as per relevant INCO Terms. Goods delivered to site must not be delivered directly to Requestors sections, workshops or offices (**NB.** *There may be specific exceptions to this condition such as delivery of bulk commodities etc. but special arrangements will have been made prior to order.*) The Purchase Order Number and QIT Madagascar Minerals SA must be indicated on the label required on every package. A detailed, itemized packing list referencing the Purchase Order Number, Purchase Order Line Number, Seller Invoice Number, item description and weight must be provided upon delivery.

All prices include free delivery to the delivery point stated in the order form.

Proof of Delivery as specified on the order, should be via a **Delivery Note, Goods Receipt Advice**, duly signed by an authorised representative of QMM Central Stores or an authorised representative of the Freight Forwarder of QMM (*Invoices should not be used as a proof of delivery*).

The following example shows required information on the Delivery Note.

Standard information requested on Invoice								
Suppliers del note #					xxxxxxx			
QMM purchase order					xxxxxxx			
PO Line or Item Number (e.g. 10, 20...)	Item Description	QMM Material number	QTY	Unit	Price per Unit	Total delivered line price	Total PO QTY	Outstanding PO QTY of this line
SIGNATURE _____								
This information is requested for each line item of each relevant purchase order								

9. **Change of Ownership** – Goods are deemed to become the property of QMM at the time of delivery to QMM or as per INCO Terms of related Order. Goods remain at the sole risk of the Seller until full delivery has taken place as per INCO Terms of related Order.
10. **Incidents Arising During Delivery** – The Seller will compensate QMM for any loss incurred by QMM arising from any accident, injury or damage to persons or property caused by the Seller during the delivery, inspection or installation of the goods by the Seller as per INCO Terms of related Order.
11. **Late Delivery** – Should delivery of the goods not be made by the dates specified in the order or if QMM is of the opinion that the Seller will be unable to make timeous delivery, whether in whole or in part, QMM shall be entitled to either
- Cancel the order either in whole or to the extent of such default and to return to the Seller all deliveries made and to receive compensation from the Seller for all expenses incurred by QMM as a result of the Seller's failure to deliver Goods on the Delivery Date or. Such cancellation shall be without prejudice and in addition to any other rights and remedies available to QMM. Should QMM cancel the order either in whole or in part it shall be entitled to purchase the goods or the balance thereof, as the case may be, from an alternative source and in such event shall be entitled to recover from the Seller any additional costs incurred by it as a result thereof.
 - To charge the Seller a penalty of 1% of the value of the Goods outstanding at the Delivery Date, for every week or part of a week that delivery is late, unless the penalty is varied elsewhere in this order.

However, if they are satisfied that every reasonable effort has been made by the Seller to deliver the Goods on time, and that the cause of the delay is beyond the control of the Seller, the Procurement Manager may grant an extension of the delivery period or waive the penalty.

Time is the essence of the order.

All carriers charged with transportation of the goods shall be deemed to be the Seller's agent to the point of delivery stated in the order.

12. **Defective Goods** – All goods and services supplied shall conform to the specification embodied in the order and in the absence thereof shall be the best of their respective kind and shall be suitable for the purpose for which they are intended. Should any Goods sold and delivered to QMM be defective in any respect, the Seller undertakes to replace those Goods as soon as possible after being requested by QMM to do so. The Seller will compensate QMM for any direct loss incurred as a result of the defect. If any goods or services are found at any time to be:

- (a) defective in quantity, material, workmanship or design (where design is the responsibility of the Seller); or
- (b) damaged because of unsatisfactory packaging; or
- (c) not in conformity with the requirements of the order as to description, formula, specification or any special instructions contained in the order; or
- (d) not in conformity with any approved samples; or
- (e) not in conformity with the normal standards of quality for such goods or services or;
- (f) defective or deficient in any other way;

then notwithstanding acceptance of delivery of, or payment for, such goods or services by QMM, QMM shall have the right in addition and without prejudice to any other rights and remedies available to it either to reject and return the goods or reject the services at the Seller's expense and to recover the Purchase Price paid for the goods or services or to rectify the rejected goods or services and recover the cost thereof from the Seller.

13. **Standard of Services** – If services are being provided, the Seller shall:

- (a) supply the services with all proper care and diligence and in accordance with the highest recognised standards applicable to such services;
- (b) ensure that its employees will have the qualifications, experience and skills required for the performance of the services;
- (c) ensure its employees are sober, not under the influence of mind altering drugs, are well presented and courteous;
- (d) perform the services in such a manner so as not to disrupt or interfere with the normal business operations of QMM and which will not constitute a nuisance to any person; and
- (e) comply with all of QMM's standard health, safety, security, fire, environmental and other ancillary standards, policies and regulations as amended from time to time.

14. **Warranty** – The Seller warrants and represents that all goods purchased in terms of the order shall be free from patent or latent defects and that such goods shall be satisfactory in every respect for the purpose for which they are intended.

The Seller shall fully disclose all hazards, potential and actual, that may be associated in any way whatsoever with the goods including in particular hazards associated with the direct or indirect use of and exposure to storage and disposal thereof. Where the goods are potentially hazardous the Seller shall:

- (a) furnish full details as to the safe transport, storage, handling, use and disposal of the goods;

- (b) furnish full details of the recommended treatment for persons who may be harmed or injured through use of or contact with the goods;
- (c) label all goods and packages containing the goods in such a way that persons who handle them or are exposed to them are clearly warned as to the hazards and the safety precautions which shall be observed in relation thereto.
- (d) In the case of all chemicals supplied shall be accompanied by a Material Safety Data Sheet.

Should the Seller fail fully to comply with the provisions of (a) (b), (c) and (d) above then the Seller shall and does hereby indemnify QMM and the Associate Companies and holds them harmless against all loss or damage which may be sustained by them including all claims, demands, proceedings, legal costs, charges and expenses which they may incur or sustain.

15. **Goods not Covered by an Order** – QMM is not responsible for Goods delivered, which are not covered by an official Purchase Order. If there is an oversupply of items identified on an order, these items will not be received and will be set aside. It is the Seller's responsibility to arrange all logistical and commercial requirements for their return.

16. **Invoicing**

- (a) The Seller shall issue an original legal tax invoice that will be delivered with the goods to the Freight Forwarder
- (b) On generation of the invoice the Seller shall send an electronically scanned copy of the original tax invoice to the buyer whose name will be on the Purchase Order invoiced against.
- (c) Delivery of goods cannot be accepted if the requirements of QMM and the requirements of Madagascar customs are not met.
- (d) The Madagascar customs requirements for information on Commercial invoices are as follows:
 - 1- Exact name and address of seller
 - 2- Exact name and address of buyer and also his commercial registration (QIT = 2301016) number in Madagascar
 - 3- Chronological Invoice number and invoice date
 - 4- Clear goods descriptions for each item
 - 5- HS tariff code (Madagascar import tariff code) for each item
 - 6- Mark - reference - origin of goods
 - 7- Packing style
 - 8- Detailed quantity - Unit price with a legal currency - total price of good sold out
 - 9- Total amount of the invoice (numeral and letter)
 - 10- Incoterms
 - 11- Payment mode
 - 12- Sellers signature

The following example shows required information on the Invoice.

Standard information requested on Invoice			
Please insert company letterhead			
FOR CUSTOMS PURPOSES ONLY			
Address:		TEL:	
		FAX:	
Comp Reg #:		E-MAIL:	
Invoice to:	Invoice Number :		
QIT Madagascar Minerals		PO #:	
LOT II J169, Ivandry, Villa 3 H		Invoice date:	
Antananarivo , 101		Payment terms:	

Madagascar					Incoterm:	FCA		
QIT: 2301016					Country of origin:	South Africa		
Purchase Order Line Item Number	Material Number	Qty	Unit	HS Code	Description	Price per Unit	% Disc	Total
IN WORDS: ONLY							TOTAL	R 0.00
Packing Style:								
Currency:								
SIGNATURE								

It is solely the responsibility of the seller to submit original invoices directly to the address indicated above – If third parties are used or copies of invoices are used, this could lead to delays in processing payments.

- (e) QMM will make payment of all undisputed amounts due to Seller on Payment Date. However, if an invoice for Goods is received by QMM before delivery of the Goods, the applicable Accumulation Period will be the period in which the Goods and all necessary supporting documents are actually delivered to QMM or its Freight Forwarder. The date of the Seller's invoice is not relevant to the date of payment.
- (f) If the date for payment of any monies under the order falls on either a weekend or public holiday, the payment will be due on the following business day.
17. **Compliance with Conditions** – QMM is entitled to insist on compliance with these conditions despite any previous custom or practise. Seller agrees to indemnify and hold harmless QMM, other members of the Rio Tinto Group, and its/their officers, directors, employees and agents, from and against any claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys' fees) caused by Seller's breach of the conditions or the order. Seller shall have no obligation to indemnify pursuant to this clause 17 if and to the extent that the relevant claim or liability is caused by an indemnified party; provided, however, this provision shall not relieve Seller of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws.
18. **Conflict of Conditions** – Should there be any conflict between the conditions of this order and any conditions stipulated by the Seller, the conditions of this order shall prevail, unless the Seller's conditions have been accepted in writing by the Procurement Manager. In the event of any conflict between the conditions of this order and the conditions of a separate but related contract signed by both parties, then the conditions of the separate contract shall prevail.
19. **Gifts** – The Seller undertakes not to offer or give gifts or entertainment to any employee of QMM which could influence, or be construed as being intended to influence, that employee in the performance of his duties. Any areas of doubt should be cleared with the Procurement Manager.
20. **Conflict of Interest** – The Seller undertakes to declare in writing any conflicts of interest associated with their performance of this work or delivery of goods. This includes, but is not limited to, relationships with employees that may be able to influence awarding of work and any factor that would prevent the Seller from providing appropriate attention to the fulfilment of this Order.
21. **Compliance with Laws, etc. Rio Tinto Business Practices** – In supplying the Goods, Seller will and will ensure that its employees, agents, contractors and subcontractors ("**Personnel**") (a) comply with all applicable laws and regulations; (b) comply with the Rio Tinto Group's policies including "*The Way We Work*", the Supplier Code of Conduct and the Business Integrity Standard available at

<http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx> or www.riotinto.com (together the “**Rio Tinto Business Practices and Standards**”), report all actual, alleged or suspected noncompliance with the Rio Tinto Business Practices and Standards to the Buyer through Rio Tinto’s Speak-OUT program and cooperate promptly and fully with Rio Tinto and the Buyer in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards; and (c) to the extent that Seller’s Personnel are required to enter onto QMM’s site or property, ensure that such Personnel (i) comply with QMM’s written health, safety and environmental policies and standards provided to Seller, and (ii) are aware that they enter onto QMM’s site or property at their own risk. If Seller will perform any Services onsite under this order, it shall, at its own cost, complete induction training courses required by QMM prior to entering onto QMM’s Site.

QMM reserves the right to monitor and/or audit the Seller’s adherence to the Rio Tinto Business Practices and Standards.

Seller represents and warrants that it has not violated and will not violate, in connection with this PO, the Australian Criminal Code Act 1995, the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010 or any other similar applicable law (including any applicable Australian State or Territory laws), or engaged in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such laws apply. Seller represents and warrants that it will comply with all applicable laws concerning the import, export or re-export of goods, services or technology and economic or trade sanctions or restrictive measures, including such laws or measures enacted, administered, imposed or enforced by Australia, the European Union, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of State or the United Nations Security Council.

22. **Publicity** – No information relating to this order may be released for publication without QMM’s prior consent. If the Seller wishes to release information relating to this order in written or other media forms, a copy of the item in the appropriate format shall be forwarded (together with details of where it will be published or released) to the Procurement Manager for written approval. This restriction also applies to any orders or contracts placed by the Seller on third parties as a result of this order.
23. **Privacy and Data Protection.** QMM and Seller each warrant that it will comply with its obligations under applicable Privacy Legislation in respect of Personal Data that is collected by or disclosed to it under this PO.

Data Processing Obligations: The Seller accepts that in relation to all QMM Personal Data, it must (a) only Process it for the purposes of supplying Goods or Services under the PO, and as directed by QMM; (b) not disclose QMM Personal Data to any other person without QMM’s prior written consent, unless the disclosure is required by applicable law (and Seller immediately notifies Rio Tinto, unless such notification is prohibited by that law) or is to an approved subcontractor; (c) take appropriate action to ensure any Seller personnel who process QMM Personal Data understand and comply with the Seller’s privacy and confidentiality obligations under this PO; (d) upon request, provide all reasonable assistance to QMM to facilitate the exercise of rights of data subjects; (e) promptly notify QMM as soon as it has received a complaint from any individual regarding the way his or her Personal Data has been processed; and (f) not transfer QMM Personal Data from Madagascar unless QMM has provided prior consent in writing

Personal Data Security and Personal Data Breach Notification: (a) Seller must put into place and maintain appropriate technical and organisational measures to secure QMM Personal Data, having regard to the risk of accidental or unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Personal Data. (b) If Seller has knowledge of any (i) accidental loss or destruction of, or unauthorised disclosure of or access to QMM Personal Data; or (ii) data security breach on any of the systems used in the provision of the

Services, Seller must (iii) expeditiously report such incident to QMM; (iv) mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Seller or its subcontractors; (v) cooperate with QMM in providing any notices to individuals regarding the incident, as directed by QMM; and (vi) cooperate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with QMM.

Indemnity: Seller shall indemnify, defend and hold harmless QMM, its respective directors, officers, and employees from and against any and all losses, claims, demands, suits, actions and other liabilities of every kind and character, arising from Seller 's breach of this clause 23.

24. **Laws Applicable** – This contract shall be governed by the laws in force in the Republic of Madagascar. Any legal action relating to this order shall be instituted in the Court of Antananarivivo notwithstanding that the amount of any claim otherwise exceeds the jurisdiction of such court if the instituting party so wish.
25. **Cession and Assignment** – The Seller shall not cede, assign or otherwise make over the order or any part thereof or share any interest therein or sub-let or entrust the performance of anything to be done thereunder to any other person without the prior written consent of QMM which may be refused without any reasons being given therefor. Such consent shall not relieve the Contractor of any of its obligations and it shall be responsible to QMM for the acts and omissions of its subcontractors as if they had been acts and omissions of the Contractor.
26. **Taxes, Freight Costs and Customs Duties** – The prices specified in the order are exclusive of any value added tax ("VAT"), goods and services tax ("GST"), sales, use or consumption tax or similar government tax payable on the supply of the Products and/or Services (collectively, "Indirect Transaction Taxes"). If Seller is required by applicable laws to collect and pay Indirect Transaction Taxes to relevant government agency, Buyer shall remit payment to Seller of applicable Indirect Transaction Taxes at the percentage rate required by applicable laws in the jurisdiction where the supply takes place, provided Seller has first provided to Buyer an invoice for Indirect Transaction Taxes Invoice that complies with applicable laws. Buyer reserves the right to withhold payment of Indirect Transaction Taxes if it has provided a valid tax exemption certificate to Seller. If the order requires Seller to provide Services, and if Seller is a foreign corporation or company (i.e. having its principal place of business outside of the country identified in Buyer's address on the face of the PO) or a non-resident alien individual, then, unless Seller provides Buyer with valid documentation (received prior to payment for Services) showing that an exemption applies where the Services are performed: (a) Buyer reserves the right to withhold payment of amounts required to satisfy tax withholding obligations under applicable laws on account of the Services; and (b) Buyer will use commercially reasonable best efforts to furnish Seller receipts, proof of payment or other relevant documentation for any withholding taxes so paid. Unless specified otherwise on the face of the order or in any attachments thereto, the prices are inclusive of, and Seller shall be solely responsible for and pay, all costs of delivering the Products to the delivery point specified on the face of the PO, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports or exports of the Products ("Customs Duties"). Seller will take all reasonable steps to minimize Customs Duties costs.